



General Assembly

February Session, 2004

***Amendment***

LCO No. 4259

**\*HB0504304259SD0\***

Offered by:

SEN. MCDONALD, 27<sup>th</sup> Dist.

To: Subst. House Bill No. 5043

File No. 475

Cal. No. 440

***"AN ACT CONCERNING THE PENALTY FOR ENTICING A MINOR."***

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. Section 53a-193 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2004*):

5 The following definitions are applicable to this section and sections  
6 53a-194 to 53a-210, inclusive, and sections 504 to 506, inclusive, of this  
7 act:

8 (1) Any material or performance is "obscene" if, (A) taken as a  
9 whole, it predominantly appeals to the prurient interest, (B) it depicts  
10 or describes in a patently offensive way a prohibited sexual act, and  
11 (C) taken as a whole, it lacks serious literary, artistic, educational,  
12 political or scientific value. Predominant appeal shall be judged with  
13 reference to ordinary adults unless it appears from the character of the  
14 material or performance or the circumstances of its dissemination to be

15 designed for some other specially susceptible audience. Whether a  
16 material or performance is obscene shall be judged by ordinary adults  
17 applying contemporary community standards. In applying  
18 contemporary community standards, the state of Connecticut is  
19 deemed to be the community.

20 (2) Material or a performance is "obscene as to minors" if it depicts a  
21 prohibited sexual act and, taken as a whole, it is harmful to minors. For  
22 purposes of this [subsection] subdivision: (A) "Minor" means any  
23 person less than seventeen years old as used in section 53a-196 and less  
24 than sixteen years old as used in sections 53a-196a [.] and 53a-196b,  
25 [and 53a-196c] and (B) "harmful to minors" means that quality of any  
26 description or representation, in whatever form, of a prohibited sexual  
27 act, when (i) it predominantly appeals to the prurient, shameful or  
28 morbid interest of minors, (ii) it is patently offensive to prevailing  
29 standards in the adult community as a whole with respect to what is  
30 suitable material for minors, and (iii) taken as a whole, it lacks serious  
31 literary, artistic, educational, political or scientific value for minors.

32 (3) "Prohibited sexual act" means erotic fondling, nude performance,  
33 sexual excitement, sado-masochistic abuse, masturbation or sexual  
34 intercourse.

35 (4) "Nude performance" means the showing of the human male or  
36 female genitals, pubic area or buttocks with less than a fully opaque  
37 covering, or the showing of the female breast with less than a fully  
38 opaque covering of any portion thereof below the top of the nipple, or  
39 the depiction of covered male genitals in a discernibly turgid state in  
40 any play, motion picture, dance or other exhibition performed before  
41 an audience.

42 (5) "Erotic fondling" means touching a person's clothed or unclothed  
43 genitals, pubic area, buttocks, or if such person is a female, breast.

44 (6) "Sexual excitement" means the condition of human male or  
45 female genitals when in a state of sexual stimulation or arousal.

46 (7) "Sado-masochistic abuse" means flagellation or torture by or  
47 upon a person clad in undergarments, a mask or bizarre costume, or  
48 the condition of being fettered, bound or otherwise physically  
49 restrained on the part of one so clothed.

50 (8) "Masturbation" means the real or simulated touching, rubbing or  
51 otherwise stimulating a person's own clothed or unclothed genitals,  
52 pubic area, buttocks, or, if the person is female, breast, either by  
53 manual manipulation or with an artificial instrument.

54 (9) "Sexual intercourse" means intercourse, real or simulated,  
55 whether genital-genital, oral-genital, anal-genital or oral-anal, whether  
56 between persons of the same or opposite sex or between a human and  
57 an animal, or with an artificial genital.

58 (10) "Material" means anything tangible which is capable of being  
59 used or adapted to arouse prurient, shameful or morbid interest,  
60 whether through the medium of reading, observation, sound or in any  
61 other manner. Undeveloped photographs, molds, printing plates, and  
62 the like, may be deemed obscene notwithstanding that processing or  
63 other acts may be required to make the obscenity patent or to  
64 disseminate it.

65 (11) "Performance" means any play, motion picture, dance or other  
66 exhibition performed before an audience.

67 (12) "Promote" means to manufacture, issue, sell, give, provide,  
68 lend, mail, deliver, transfer, transmit, publish, distribute, circulate,  
69 disseminate, present, exhibit, advertise, produce, direct or participate  
70 in.

71 (13) "Child pornography" means any [material involving a live  
72 performance or photographic or other visual reproduction of a live  
73 performance which depicts a minor in a prohibited sexual act] visual  
74 depiction including any photograph, film, videotape, picture or  
75 computer-generated image or picture, whether made or produced by  
76 electronic, mechanical or other means, of sexually explicit conduct,

77 where the production of such visual depiction involves the use of a  
78 person under sixteen years of age engaging in sexually explicit  
79 conduct, provided whether the subject of a visual depiction was a  
80 person under sixteen years of age at the time the visual depiction was  
81 created is a question to be decided by the trier of fact.

82 (14) "Sexually explicit conduct" means actual or simulated (A)  
83 sexual intercourse, including genital-genital, oral-genital, anal-genital  
84 or oral-anal physical contact, whether between persons of the same or  
85 opposite sex, or with an artificial genital, (B) bestiality, (C)  
86 masturbation, (D) sadistic or masochistic abuse, or (E) lascivious  
87 exhibition of the genitals or pubic area of any person.

88 (15) "Visual depiction" includes undeveloped film and videotape  
89 and data, as defined in subdivision (8) of section 53a-250, that is  
90 capable of conversion into a visual image and includes encrypted data.

91 Sec. 502. Section 53a-196c of the general statutes is repealed and the  
92 following is substituted in lieu thereof (*Effective October 1, 2004*):

93 (a) A person is guilty of importing child pornography when, with  
94 intent to promote child pornography, [he] such person knowingly  
95 imports or causes to be imported into the state [any] three or more  
96 visual depictions of child pornography of known content and  
97 character.

98 [(b) Importation of two or more copies of any publication containing  
99 child pornography shall be prima facie evidence that such publications  
100 were imported with intent to promote child pornography.]

101 [(c)] (b) Importing child pornography is a class [C] B felony.

102 Sec. 503. Section 53a-196d of the general statutes is repealed and the  
103 following is substituted in lieu thereof (*Effective October 1, 2004*):

104 (a) A person is guilty of possessing child pornography [when he] in  
105 the first degree when such person knowingly possesses [child  
106 pornography, as defined in subdivision (13) of section 53a-193.

107 Possession of a photographic or other visual reproduction of a nude  
108 minor for a bona fide artistic, medical, scientific, educational, religious,  
109 governmental or judicial purpose shall not be a violation of this  
110 subsection] fifty or more visual depictions of child pornography.

111 (b) Possessing child pornography in the first degree is a class [D] B  
112 felony.

113 Sec. 504. (NEW) (*Effective October 1, 2004*) (a) A person is guilty of  
114 possessing child pornography in the second degree when such person  
115 knowingly possesses twenty or more but fewer than fifty visual  
116 depictions of child pornography.

117 (b) Possessing child pornography in the second degree is a class C  
118 felony.

119 Sec. 505. (NEW) (*Effective October 1, 2004*) (a) A person is guilty of  
120 possessing child pornography in the third degree when such person  
121 knowingly possesses fewer than twenty visual depictions of child  
122 pornography.

123 (b) Possessing child pornography in the third degree is a class D  
124 felony.

125 Sec. 506. (NEW) (*Effective October 1, 2004*) In any prosecution for a  
126 violation of section 53a-196d of the general statutes, as amended by  
127 this act, or section 504 or 505 of this act, it shall be an affirmative  
128 defense that (1) the defendant (A) possessed fewer than three visual  
129 depictions of child pornography, (B) did not knowingly purchase,  
130 procure, solicit or request such visual depictions or knowingly take  
131 any other action to cause such visual depictions to come into the  
132 defendant's possession, and (C) promptly and in good faith, and  
133 without retaining or allowing any person, other than a law  
134 enforcement agency, to access any visual depiction or copy thereof,  
135 took reasonable steps to destroy each such visual depiction or reported  
136 the matter to a law enforcement agency and afforded that agency  
137 access to each such visual depiction, or (2) the defendant possessed a

138 visual depiction of a nude person under sixteen years of age for a bona  
139 fide artistic, medical, scientific, educational, religious, governmental or  
140 judicial purpose.

141 Sec. 507. Subsection (e) of section 53a-29 of the general statutes is  
142 repealed and the following is substituted in lieu thereof (*Effective*  
143 *October 1, 2004*):

144 (e) The period of probation, unless terminated sooner as provided in  
145 section 53a-32, shall be not less than ten years nor more than thirty-five  
146 years for conviction of a violation of subdivision (2) of subsection (a) of  
147 section 53-21, section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, [or] 53a-  
148 72b, 53a-90a, as amended by this act, 53a-196b, as amended by this act,  
149 53a-196c, as amended by this act, 53a-196d, as amended by this act, or  
150 section 504 or 505 of this act.

151 Sec. 508. Subsection (c) of section 54-56e of the general statutes is  
152 repealed and the following is substituted in lieu thereof (*Effective*  
153 *October 1, 2004*):

154 (c) This section shall not be applicable: (1) To any person charged  
155 with a class A felony, a class B felony, except a violation of section 53a-  
156 122 that does not involve the use, attempted use or threatened use of  
157 physical force against another person, or a violation of section 14-227a,  
158 as amended, subdivision (2) of subsection (a) of section 53-21, section  
159 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, [or]  
160 53a-72b, 53a-90a, as amended by this act, or section 504 or 505 of this  
161 act, (2) to any person charged with a crime or motor vehicle violation  
162 who, as a result of the commission of such crime or motor vehicle  
163 violation, causes the death of another person, (3) to any person accused  
164 of a family violence crime as defined in section 46b-38a who (A) is  
165 eligible for the pretrial family violence education program established  
166 under section 46b-38c, as amended, or (B) has previously had the  
167 pretrial family violence education program invoked in such person's  
168 behalf, (4) to any person charged with a violation of section 21a-267 or  
169 21a-279 who (A) is eligible for the pretrial drug education program

170 established under section 54-56i, or (B) has previously had the pretrial  
171 drug education program invoked in such person's behalf, or (5) unless  
172 good cause is shown, to any person charged with a class C felony.

173 Sec. 509. Subdivision (2) of section 54-250 of the general statutes is  
174 repealed and the following is substituted in lieu thereof (*Effective*  
175 *October 1, 2004*):

176 (2) "Criminal offense against a victim who is a minor" means (A) a  
177 violation of subdivision (2) of section 53-21 of the general statutes in  
178 effect prior to October 1, 2000, subdivision (2) of subsection (a) of  
179 section 53-21, subdivision (2) of subsection (a) of section 53a-70,  
180 subdivision (1), (4) or (8) of subsection (a) of section 53a-71,  
181 subdivision (2) of subsection (a) of section 53a-72a, subdivision (2) of  
182 subsection (a) of section 53a-86, subdivision (2) of subsection (a) of  
183 section 53a-87, section 53a-90a, as amended by this act, 53a-196a,  
184 53a-196b, 53a-196c, as amended by this act, [or] 53a-196d, as amended  
185 by this act, or section 504 or 505 of this act, (B) a violation of section  
186 53a-92, 53a-92a, 53a-94, 53a-94a, 53a-95, 53a-96 or 53a-186, provided  
187 the court makes a finding that, at the time of the offense, the victim  
188 was under eighteen years of age, (C) a violation of any of the offenses  
189 specified in subparagraph (A) or (B) of this subdivision for which a  
190 person is criminally liable under section 53a-8, 53a-48 or 53a-49, or (D)  
191 a violation of any predecessor statute to any offense specified in  
192 subparagraph (A), (B) or (C) of this subdivision the essential elements  
193 of which are substantially the same as said offense.

194 Sec. 510. Subsection (c) of section 19a-343 of the general statutes, as  
195 amended by section 4 of public act 03-231, is repealed and the  
196 following is substituted in lieu thereof (*Effective October 1, 2004*):

197 (c) Three or more arrests, or the issuance of three or more arrest  
198 warrants indicating a pattern of criminal activity and not isolated  
199 incidents, for the following offenses shall constitute the basis for  
200 bringing an action to abate a public nuisance:

201 (1) Prostitution under section 53a-82, 53a-83, 53a-86, 53a-87, 53a-88

202 or 53a-89.

203 (2) Promoting an obscene performance or obscene material under  
204 section 53a-196 or 53a-196b, employing a minor in an obscene  
205 performance under section 53a-196a, [or importing or possessing child  
206 pornography under section 53a-196c or 53a-196d] importing child  
207 pornography under section 53a-196c, as amended by this act,  
208 possessing child pornography in the first degree under section 53a-  
209 196d, as amended by this act, possessing child pornography in the  
210 second degree under section 504 of this act or possessing child  
211 pornography in the third degree under section 505 of this act.

212 (3) Transmission of gambling information under section 53-278b or  
213 53-278d or maintaining of a gambling premises under section 53-278e.

214 (4) Offenses for the sale of controlled substances, possession of  
215 controlled substances with intent to sell, or maintaining a drug factory  
216 under section 21a-277, 21a-278 or 21a-278a or use of the property by  
217 persons possessing controlled substances under section 21a-279.  
218 Nothing in this section shall prevent the state from also proceeding  
219 against property under section 21a-259 or 54-36h.

220 (5) Unauthorized sale of alcoholic liquor under section 30-74 or  
221 disposing of liquor without a permit under section 30-77, as amended.

222 (6) Violations of the inciting injury to persons or property law under  
223 section 53a-179a.

224 (7) Maintaining a motor vehicle chop shop under section 14-149a.

225 (8) Murder or manslaughter under section 53a-54a, 53a-54b, 53a-55,  
226 53a-56 or 53a-56a.

227 (9) Assault under section 53a-59, 53a-59a, subdivision (1) of  
228 subsection (a) of section 53a-60 or section 53a-60a.

229 (10) Sexual assault under section 53a-70 or 53a-70a.



230 (11) Fire safety violations under section 29-292, subsection (b) of  
231 section 29-310, or section 29-315, as amended, 29-317, 29-320, 29-325,  
232 29-329, 29-337, 29-349 or 29-357, as amended.

233 Sec. 511. (*Effective from passage*) (a) A task force is established to  
234 study procedures under state and federal law for law enforcement  
235 agencies in this state to access subscriber records and the contents of  
236 electronic or wire communications maintained by providers of  
237 electronic communication service or remote computing service, as  
238 those terms are defined in 18 USC 2510 and 18 USC 2711, respectively.

239 (b) The task force shall be composed of the Commissioner of Public  
240 Safety, the Chief State's Attorney, the Chief Public Defender, the Chief  
241 Court Administrator, a representative of the Connecticut Police Chiefs  
242 Association and the cochairpersons and ranking members of the joint  
243 standing committees of the General Assembly having cognizance of  
244 matters relating to the judiciary and public safety, or their designees.

245 (c) Such study shall include, but not be limited to, an examination of  
246 (1) the method by which a law enforcement agency may require the  
247 disclosure of such information by a provider, such as by service of a  
248 search warrant, court order or administrative subpoena, (2) the  
249 standard for the issuance of a court order or subpoena, (3) the  
250 procedure for notifying a subscriber when the records of such  
251 subscriber or the contents of communications made by such subscriber  
252 are sought from a provider, (4) the procedure for a provider or a  
253 subscriber to move to challenge a subpoena or court order, (5)  
254 procedures to ensure that the privacy interests of subscribers in wire  
255 and electronic communications are protected, and (6) remedies and  
256 sanctions for the unauthorized access to or disclosure of subscriber  
257 records or communications.

258 (d) The task force shall report its findings and recommendations,  
259 including any recommendations for legislation, to the joint standing  
260 committee on the judiciary not later than January 5, 2005, in  
261 accordance with the provisions of section 11-4a of the general statutes.

262       Sec. 512. (NEW) (*Effective from passage*) The Commissioner of  
263       Correction shall prohibit any person who has been convicted of a  
264       crime that requires registration pursuant to chapter 969 of the general  
265       statutes from having access to a computer while such person is in the  
266       custody of the commissioner and confined in a correctional facility.

267       Sec. 513. (*Effective October 1, 2004*) Sections 53a-197 and 53a-198 of  
268       the general statutes are repealed."